

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MALCARNE CONTRACTING INC.,

Plaintiff,

-against-

PROGRESSIVE CASUALTY INSURANCE CO.,

Defendant.

24-CV-04244 (MMG)

**ORDER REGARDING
DEFAULT JUDGMENT
AND FAILURE TO
PROSECUTE**

MARGARET M. GARNETT, United States District Judge:

On December 16, 2024, the Court issued an Order with instructions for Third-Party Plaintiff Progressive Casualty Insurance Company (“Progressive”) to file any motion for default judgment against Third-Party Defendants Sidewalk Repair NYC, Inc. (“Sidewalk Repair”) and Eden General Construction, Inc. (“Eden”). *See* Dkt. No. 53. The Order instructed Progressive to serve a copy of the Court’s Order on Sidewalk Repair and Eden by December 18, 2024, and to file proof of such service by December 19, 2024. On December 27, 2024, Progressive filed proof of service upon Sidewalk Repair and Eden, showing that service had been made on December 26, 2024. As Court staff has instructed Progressive’s counsel, counsel seeking an extension of a deadline must file a request for the extension in accordance with the Court’s Individual Rules and Practices. The Court will not accept untimely filings in the future absent compliance with these procedures.

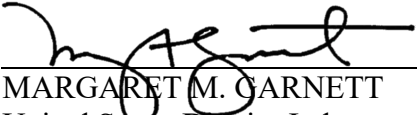
Because Progressive served Eden and Sidewalk Repair with a copy of the Court’s Order on December 26, 2024, the Court’s prior Order at Dkt. No. 53 is modified as follows: If Sidewalk Repair and Eden do not respond to the Third-Party Complaint or appear by **January 10, 2025**, then by **January 20, 2025**, Progressive must file any motion for default judgment. Sidewalk Repair and Eden shall file any opposition to any motion for default judgment by **February 5, 2025**. Progressive shall serve a copy of this Order on Sidewalk Repair and Eden by first-class mail and/or by in-person service within **two business days from the date of this Order**, and shall file proof of such service **within three business days of the date of this Order**. In the event Progressive files a motion for default judgment, Progressive shall serve its default judgment motion papers on the defaulting party or parties by **January 23, 2025**, and shall file proof of such service by **January 24, 2025**.

Additionally, in the Court’s Order at Dkt. No. 53, the Court ordered that by December 20, 2024, if Progressive had not filed proof of service upon Third-Party Defendant Juan Bautista, then Progressive must file a letter detailing efforts to serve Bautista and proposing next steps. This deadline has passed. If Progressive fails by **January 10, 2025**, to (1) file proof of such service or (2) file a letter detailing efforts to serve Bautista, the Court will dismiss Progressive’s claim

against Bautista for abandonment or failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. *See Taub v. Hale*, 355 F.2d 201, 202 (2d Cir. 1966) (per curiam).

Dated: January 2, 2025
New York, New York

SO ORDERED.



MARGARET M. CARNETT
United States District Judge